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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1961

No. 826

EUGENE J. MORRISSETTE, FELIX LEE and NATHANIEL BROWN,

Petitioners,

vs.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, a corporation,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

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RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

To The Honorable The Chief Justice and Associate Justices of the Supreme Court of the United States:

RESPONDENT'S STATEMENT OF THE CASE.

This case involves a question of law which was decided by this Court in 1959 in *Union Pacific Railroad* v. *Price*, 360 U.S. 601.

No constitutional questions are involved. The statute under which the controversy arose is the Railway Labor Act 45 U.S.C. Section 153. There is no suggestion in the petition that any of the grounds for certiorari exist that are enumerated in Supreme Court Rule 19(b). There must therefore be some "special or important reason" to call for the exercise of this Court's discretion in granting the writ. It is believed that no such reason exists.

Petitioners filed a complaint in the District Court of the United States, Northern District of Illinois against Respondent seeking damages for wrongful discharge and blacklisting and for reinstatement. No diversity existed nor was diversity alleged. Jurisdiction was sought under the provisions of the Railway Labor Act.

The complaint alleged that Petitioners had submitted their grievances to the Railroad Adjustment Board; that on September 10, 1959, the Board deadlocked; that on December 16, 1959, the deadlock was broken and the Adjustment Board decided Petitioners' claims adversely.

On motion of Respondent, the District Court dismissed the complaint for lack of jurisdiction. The Court of Appeals affirmed on the ground that Petitioners had elected to pursue their administrative remedy before the Railroad Adjustment Board and having obtained an adverse decision, could not thereafter relitigate the question in the District Court in a proceeding to which the Board was not a party. This decision followed the doctrine of the *Price* case, *supra*.(1)

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(1) "To say that the discharged employee may litigate the validity of his discharge in a common-law action for damages after failing to sustain his grievance before the Board is to say that Congress planned that the Board should function only to render advisory opinions, and intended the Act's entire scheme for the settlement of grievances to be regarded as wholly conciliatory in character, involving no element of legal effectiveness, with the consequence that the parties are entirely free to accept or ignore the Board's decision * * * (A contention) inconsistent with the Act's terms, purposes and legislative history." *Elgin, Joliet & Eastern Ry. Co.* v. *Burley*, 325 U.S. 711, 720-721.

"We therefore hold that the respondent's submission to the Board of his grievances as to the validity of his discharge precludes him from seeking damages in the instant common-law action." p. 617

STATUTE INVOLVED.

45 U.S.C.A., Section 153

"First. There is established a Board, to be known as the 'National Railroad Adjustment Board', the members of which shall be selected within thirty days after June 21, 1934, and it is provided—

"(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 152 of this title.

* * * * * *

"(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

* * *

"Third Division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

* * *

"(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as 'referee', to sit with the division as a member thereof, and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the dead-

lock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this chapter for the appointment of arbitrators and shall fix and pay the compensation of such referees.

* * *

"(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it."

QUESTION FOR REVIEW.

The question here presented is whether a Division of the Railway Adjustment Board is free, after an original deadlock to itself break the deadlock and decide a claim pending before it on the merits prior to the appointment of a neutral referee, where neither the Board nor either party to the proceeding had certified to the Mediation Board the existence of the deadlock with a request for the appointment of a referee.

ARGUMENT.

Section 153(h) of the Railway Labor Act provides that the normal complement of the Third Division of the Adjustment Board is ten persons—five carrier members and five labor members.

Section 153(n) of such Act provides that a majority vote of all members of the Division shall be competent to make an award with respect to any dispute submitted to it.

There can be no question therefore, but that basically the Adjustment Board has jurisdiction to decide any grievance submitted to it.

The inherent right to exercise this power is in no way inhibited. It is not circumscribed nor taken away by virtue of a deadlock.

And the existence of a deadlock does not render the Board incompetent to take further steps in its deliberative processes. Having the right to proceed, and there being no prohibition against proceeding after deadlock, it must follow that a final decision before appointment of a neutral referee is valid and binding.

Respondent agrees that if the deadlock continued and a neutral referee had been appointed either at the request of the Adjustment Board or the request of either party to the dispute, and the referee had not been a party to the Board's decision, then Petitioners might by an appropriate proceeding in the District Court to which the Board was a party review the proceeding before the Adjustment Board.

That however, is not our case. Here the Board itself resolved the deadlock and rendered a final award. Here the Board is not a party to the case. The administrative

actions were brought to a conclusion by the Adjustment Board, without the appointment of a neutral referee, under the applicable provisions of the statute giving it jurisdiction to make such an award. Under such circumstances, the District Court lacked jurisdiction to relitigate such question decided by the Adjustment Board.

The sections of the Railway Labor Act dealing with a deadlock set up a procedure to be followed by the Adjustment Board, or by either party to the dispute, to break the deadlock. Here neither the Adjustment Board nor any party to the dispute sought to avail themselves of the procedure set forth in the statute. The case continued as a pending one before the Adjustment Board which finally resolved the issues and decided the case.

It would seem almost axiomatic that a failure of Petitioners to follow the statutory procedure for breaking the deadlock could not in and of itself oust the Adjustment Board of jurisdiction to decide the case and confer jurisdiction on the District Court. There is no statutory provision to that effect. No case is cited to support such rule. The petition therefore should be denied under the doctrine announced in the *Price* case.

Respectfully submitted,

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